

No. 9/5/84-6Lab./9437.—In pursuance of the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer, Labour Court, Rohtak in respect of the dispute between the workman and the management of M/s Haryana Roadways, Sirsa.

BEFORE SHRI B. P. JINDAL, PRESIDING OFFICER, LABOUR COURT, ROHTAK

Reference No. 14 of 1983

between

SHRI KRISHAN KUMAR, WORKMAN AND THE MANAGEMENT OF M/S HARYANA ROADWAYS, SIRSA

Shri V. K. Bansal A.R. for the workman.

Shri V. K. Kohli A. R. for the management.

AWARD

1. In exercise of the powers conferred by clause (c) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, the Governor of Haryana, referred the following dispute, between the workman Shri Krishan Kumar and the management of M/s Haryana Roadways, Sirsa, to this Court, for adjudication,— vide Labour Department Gazette Notification No. ID/7210-14, dated 23rd February, 1983 :—

Whether the termination of service of Shri Krishan Kumar was justified and in order? If not, to what relief is he entitled?

2. On receipt of the order of reference, notices were issued to the parties. The parties appeared. The case of the petitioner is that he was employed with the respondent as a Conductor since 8th July, 1981 but the respondent choose to terminate his services unlawfully on 28th May, 1982 and that the said order of termination is illegal and void. Its further alleged that his services were terminated on the basis of trumped up charges; into which a farce of an enquiry was held, and in holding the same, the Enquiry Officer flouted all principles of natural justice and as such, the order of termination passed on the basis of the said enquiry report is untenable. *inter alia*, it is alleged that the father of the petitioner is a driver in the respondent roadways at Sirsa, who had strained relations with the Traffic Manager of the said Depot, who was Enquiry Officer and as such, the Enquiry Officer was willing and convenient, tool in the hands of the management to procure a report against the petitioner. It is also alleged that the father of the petitioner had filed a complaint with the State Transport Controller, Haryana, Chandigarh, against the then General Manager, Haryana Roadways, Sirsa Depot.

3. In the reply filed by the respondent, the claim of the workman has been controverted in toto. Validity and legality of the order of termination passed is asserted, though it is admitted that the petitioner remained employed with the respondent from 8th July, 1981 to 25th August, 1982. It is also denied that the enquiry held was not fair and proper.

4. On the pleadings of the parties, the following issues were settled for decision by me on 27th September, 1984 :—

(1) Whether a valid and proper domestic enquiry was held? If not, to what effect?

(2) Whether the termination of services of Shri Krishan Kumar was justified and in order? If not, to what relief is he entitled?

5. The learned Authorised Representative of the workman assailed the validity and legality of the enquiry report the ground that the Enquiry Officer was biased against the workman, because it was he, who was functioning both as a Judge and as a Prosecutor. In that behalf he has pointedly referred to the admission of MW-3 Shri N.S. Phogat, Enquiry Officer that the questions on behalf of the respondent department were put by him to the prosecution witness. No umbrage can be taken, in case, the questions are put by the Enquiry Officer to illicit truth from the witness but the position of an Enquiry Officer is that of a Judge and the rules of natural justice demand that he himself be a person with an open mind, a mind which is not biased against the delinquent official. He must act with the detachment of a Judge, since he is professing to exercise that dignified function. In the present case, the conduct of the Enquiry Officer all through has been reprehensible. The department did not supply even the statement of allegations to the delinquent employee. So, it cannot be held that the procedure adopted by the Enquiry Officer was fair and proper and so, this issue goes against the respondent-management.

6. Normally when the validity of enquiry report is set aside by the Court, an opportunity is granted to the respondent to adduce evidence on merits. But that opportunity can be granted, only, in case, there is a specific prayer by the management to do so in the reply filed in the Court or before the close of proceedings in the Court. In the present case, even till today no such request has been made orally or in writing on behalf of the management. So, *suo-moto* this Court cannot grant any opportunity to the management to lead evidence on merits regarding the allegations against the workman.

7. *Issue No. 2.*—Normally when the domestic enquiry is held to be not proper and valid, order of reinstatement follows, but in the present case, besides enquiry held being defective and not proper, there are other circumstances, which entitles the workman to earn order of reinstatement. Those are that he father of the workman Shri Babu Ram WW-2 is also an employee of the roadways posted at Sirsa Depot, had filed some complaints against the General Manager, Haryana Roadways, Sirsa, copy of the same is Ex. W-3. Further he appeared in the Court to substantiate the allegations made in the complaint. Without going into the merits of the allegations made, it is suffice to observe that the same are serious in nature and the father of the petitioner seems to be a crusader against corruption, which attitude of his was not relished by certain official of the Depot.

8. Otherwise the allegations against the workman are that he did not issue tickets to four passengers from Bhawanigarh to Sirsa, when checking of the bus was made at Sardulgarh. The said Bus on 28th December, 1981 was bound from Chandigarh to Kariwala. The defence taken by the workman is that he was new to the said route and that he had charged fare from the passengers, but promised to issue them tickets after verifying the actual fare. The workman seems to have been taken an honest stand before the Enquiry Officer, which should have been considered by him while making a report against the workman. Under these circumstances, the workman is ordered to be reinstated with continuity of service and full back wages, because the demand notice was raised by him within three days of his termination. The reference is answered and returned accordingly with no order as to cost.

Dated the 10th October, 1985.

B. P. JINDAL,
Presiding Officer,
Labour Court, Rohtak,
Camp Court, Sirsa.

Endst. No. 14-83/1704, dated 21st October, 1985.

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

B. P. JINDAL,
Presiding Officer,
Labour Court, Rohtak
Camp Court, Sirsa.

No. 9/5/84-6Lab/9408.—In pursuance of the provisions of Section 17 of the Industrial Disputes Act 1947 (Central Act, No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Labour Court, Rohtak, in respect of the dispute between the workman and the management of M/s (i) Chief Administrator, Haryana Urban Development Authority, Chandigarh (ii) Haryana Urban Development Authority, Division No. 2, Hissar.

BEFORE SHRI B. P. JINDAL, PRESIDING OFFICER, LABOUR COURT, ROHTAK -

Reference No. 123 of 1984.

between

SHRI MAHENDER SINGH, WORKMAN AND THE MANAGEMENT OF M/S (i) CHIEF ADMINISTRATOR, HARYANA URBAN DEVELOPMENT AUTHORITY, CHANDIGARH, (ii) HARYANA URBAN DEVELOPMENT AUTHORITY, DIVISION NO. 2, HISSAR

Present :—

Shri T. C. Gupta A.R. for the workman.

Shri R.D.S. Grewal A.R. for the management.

AWARD

1. In exercise of the powers conferred by clause (c) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947, the Governor of Haryana, referred the following dispute between the workman Shri Mahender Singh and the management of M/s (i) Chief Administrator, Haryana Urban Development Authority, Chandigarh, (ii) Haryana Urban Development Authority, Division No. 2, Hissar, to this Court, for adjudication,— vide Haryana Government Gazette Notification No. 27035-40, dated 30th July, 1984 :—

whether the termination of services of Shri Mahender Singh is justified and in order ? If not, to what relief is he entitled ?

2. - On receipt of the order of reference, notices were issued to the parties. The parties appeared. The claim of the workman is that he was employed with the respondent as a Daily Wager from 20th January, 1982 to 3rd October, 1983, on which date the respondent chose to terminate his services unlawfully in flagrant disregard of the provisions of the Industrial Disputes Act, 1947

3. In the reply filed by the respondent, the claim of the workman has been controverted, in toto. It is pleaded that the respondent is not an "industry" as defined in section 2(j) of the Industrial Disputes Act, 1947 and that the workman was a daily wager and as such, he had no right to continue in employment. It is also alleged that the workman did not turn up after 3rd October, 1983 of his own and further more he remained gainfully employed after his alleged termination.

4. On the pleadings of the parties, the following issues were settled for decision by me on 29th January, 1985 :—

(1) whether the respondent is not an "industry" as defined in section 2(j) of the Industrial Disputes Act, 1947 ? OPR.

(2) whether the workman remained gainfully employed after his alleged termination ? OPR

(3) whether the termination of services of Shri Mahender Singh is justified and in order ? If not, to what relief is he entitled ?

5. In support of his case, the workman appeared as his own witness and the management examined MW-1 Shri Thakur Dass Chopra as MW-1.

6. Heard. Documents perused. I, now give my findings on the issues as below :—

Issue No. 1 :-

7. Definition of the term "industry" as elaborated in the Hon'ble Supreme Court judgement reported in 1978 Lab-I.C. 467 Bangalore Water Supply and Sewerage Board *versus* A. Rajappa and others. is all embracing and the respondent fall within this ambit. Further more the activities of the respondent are such that he cannot exclude itself from the term "industry" as defined in section 2(j) of the Industrial Disputes Act, 1947. On behalf of the respondent no authority has been cited, whereby the respondent would have been excluded from the term "industry". So, this issue is answered against the respondent.

Issue No. 2 :

8. On this issue there is no iota of evidence that the workman remained gainfully employed after his termination

Issue No. 3 :

9. Employment of the petitioner on 20th January, 1982 is not denied by the respondent. The case of the respondent is that the petitioner was a daily wager and during the period 20th January, 1982 to 3rd October, 1983, he remained absent of his own for 12 days. So, it was argued that the petitioner has not worked continuously for 240 days with the respondent and as such he cannot avail of the provisions of section 25 F of the Industrial Disputes Act, 1947 and that his termination does not fall within the ambit of section 2(oo) of the Industrial Disputes Act, 1947. In my opinion, this contention is misleading. There is plethora of authorities on the point that an employee, who has worked for 240 days during the last 12 calendar months on the date of his termination is entitled to avail of section 25-F of the Industrial Disputes Act, 1947. In the present case during the tenure of his employment extending for more than one year and eight months has remained absent for twelve days only. So, it cannot be said that the petitioner has not worked continuously with the respondent for more than 240 days. So, the respondent was not justified in terminating the services without complying with the provisions of section 25-F, which in this case, was not done by the respondent. So, the termination of the petitioner cannot be said to be lawful and as such he is ordered to be reinstated with continuity of service and

full back wages, because the present demand notice was raised by the workman within four days of his termination. The demand notice appended to the order of reference is dated 7th October, 1983 as per the allegations in the demand notice his services were terminated on 3rd October, 1984. The reference is answered and returned accordingly. There is no order as to cost.
Dated : The 3rd October, 1985.

B. P. JINDAL,
Presiding Officer,
Labour Court, Rohtak,
Camp Court, Hissar.

Endorsement No.-123-84/1705, dated 21st October, 1985.

Forwarded (four copies) to the Secretary to Government, Haryana, Labour & Employment Departments, Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

B. P. JINDAL,
Presiding Officer,
Labour Court, Rohtak,
Camp Court, Hissar.

The 24th October, 1985

No. 9/5/84-6 Lab./8893.—In pursuance of the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer, Labour Court, Ambala in respect of the dispute between the workman and the management of Haryana State Electricity Board, Chandigarh:—

IN THE COURT OF SHRI V. P. CHAUDHARY, PRESIDING OFFICER, LABOUR COURT,
AMBALA

Reference No. 96 of 1985

SHRI SOHAN SINGH WORKMAN AND THE MANAGEMENT OF HARYANA
STATE ELECTRICITY BOARD, CHANDIGARH.

Present:

Shri Rajeshwar Nath for workman.
Shri Dharam Vir for respondent management.

AWARD

The Hon'ble Governor of Haryana in the exercise of the powers conferred by clause (c) of sub-section 10 of the Industrial Disputes Act, 1947, referred the following dispute to this Court between Shri Sohan Singh and Haryana State Electricity Board. The terms of reference are as under:—

"Whether the termination of services of Shri Sohan Singh workman was justified and in order?" If not, what relief he is entitled to.

Workman Shri Sohan Singh in his statement of claim alleged that he was appointed as a Labourer by the respondent on 1st March, 1981 on daily wages and was posted under direct control of the Junior Engineer Raipur Rani. His services were terminated on 5th March, 1985 illegally against the law and in violation of provisions of section 25 (F) of the Industrial Disputes Act, 1947. It was also alleged that the principal of first come and last go was not observed certain Junior persons are still in service and with full back wages. Respondent appeared contested the claim of the workman. Ultimately, both the parties arrived at amicable settlement Shri Sohan Singh has been taken in service, he has given in writing in this court that he has joined service of respondent and no dues left towards the respondent, so reference is disposed of as compromised.

I pass my award regarding the dispute in question as per compromise arrived at between the parties.

Dated the 20th September, 1985.

V. P. CHAUDHARY,
Presiding Officer,
Labour Court, Ambala.

Endst. No. 2320, dated 30th September, 1985.

Forwarded (four copies) to the Financial Commissioner and Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

V. P. CHAUDHARY,
Presiding Officer,
Labour Court, Ambala.